



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3644 FAX (603) 271-2181



April 30, 2003

K. G. Enterprises, Inc.
Attn: David Kidder
PO Box 99
New London, New Hampshire 03257

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 03-002**

RE SUNAPEE, GEORGES MILLS GENERAL STORE, EXISTING UNDERGROUND
STORAGE TANK FACILITY (UST #M-0111338) (DES #199509023)

Dear Mr. Kidder:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 1281 Route 11, Georges Mills, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On October 8, 2002 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on July 29, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment device was not maintained in good working order. The spill containment device shall be repaired or cleaned to enable the device to collect and hold a minimum 5-gallon spill during a product delivery. Spill containment maintenance results for all UST systems shall be provided to DES.

2. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES could not determine that the overfill protection device was installed at the required 90% alert or 95% shut off level. The type and size of overfill device shall be provided to DES and the installation shall be confirmed that it is installed at the 90% or 95% level as applicable to the device.

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3. Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires test records be maintained for interstitial monitor and release detection records. DES has determined that the annual test documentation was not available for the tank leak monitoring equipment and devices. The release detection test results shall be provided to DES.

4. Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires test records be maintained for the monitoring testing of the piping and release detection records for the piping. DES has determined that the annual test documentation was not available for the piping leak monitoring equipment and devices. The monitor test results shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund (“the Fund”). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not maintained compliance, consequently, should your permit be revoked the Fund will not be available to you as a financial responsibility mechanism for subsequent releases. At such time as the deficiencies listed in this Notice have been resolved and your facility has been deemed in compliance with RSA 146-C and Env-Wm 1401, you may again use the Fund as your financial assurance mechanism for future releases.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance, as requested above, is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0111338) shall be revoked effective **July 29, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-

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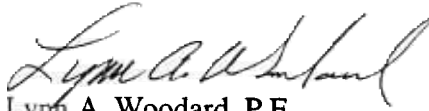
A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,



Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 2269

cc: Robert Monaco, Acting Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Sunapee

*** RETURN THIS PAGE ONLY ***

APPEARANCE

____ I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

COPY

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Date: _____

Signature _____

WAIVER OF HEARING

____ I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Signature _____

Date: _____

Please return to:

Department of Environmental Services Legal Unit
Attn: Michael Sciafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095